



AZ POST ***INTEGRITY BULLETIN*** ***Volume No. 8***



The Arizona Peace Officer Standards and Training Board (AZ POST) has the legislative mandate to establish and enforce the physical, mental, and moral fitness standards for all peace officers in the state. This charge, to protect the public by overseeing the integrity of Arizona's law enforcement officers, is met by reviewing cases and taking action against the certification of individuals who violate the AZ POST Rules. The following is a summary of some of the actions taken by the Arizona Peace Officer Standards and Training Board at its **June through November 2001**, public meetings. These actions are not precedent setting, in the sense that similar cases will end with the same result, because each case is considered on its individual facts and circumstances. Having said that, this Bulletin is being published to provide insight into the Board's position on various types of officer misconduct. As always, the Compliance Specialist for your agency is available to discuss any matter and to assist you with any questions you might have. The "*Editor Notes*" and the "Frequently Asked Questions" section are historical observations and insights for training and discussion purposes only.

A DISCUSSION ON THE POST RESPONSE TO PEACE OFFICER DISHONESTY

The following piece is a product of my observations and interactions with the Board members during my tenure as Executive Director. It is intended to clarify the potential responses by the Board in cases where officers are accused of lying. There exists a unanimous feeling that no lie on the part of an officer can be condoned or excused. Nonetheless, Board members recognize that lies come in different sizes and shapes, and produce different impacts on the public trust in peace officers. I believe that the Boards response has, and will continue to be flexible enough to account for these differences.

Tom Hammarstrom, Executive Director

During the past several years the Arizona Peace Officer Standards and Training Board has placed substantial emphasis on the issue of peace officer honesty. The Board considers personal integrity to be the single most important qualification of an Arizona peace officer, and has shown zero tolerance in cases where officers have lied.

Honesty and integrity have always been the cornerstones of the law enforcement profession. Perhaps more than any government official, a peace officer has authority to impact the liberty of individual citizens. This authority is only legitimized if the public trusts the officers it employs. Recent court decisions applying *Brady v. Maryland* have emphasized the importance of this relationship of trust by requiring prosecutors to share information with defense attorneys about officers who have been untruthful in the past. This can result in impeachment of the officer as a witness and severely limit his

or her effectiveness. While this is an important consideration, it is secondary to the Board's responsibility for insuring that a relationship of trust exists between the citizens of Arizona and the officers that POST certifies.

The Board realizes that the pursuit of truth is not an easy task. Lies come in many forms, and not every lie impacts upon the public trust in the same way. It is, however, the Board's position that any instance of dishonesty will be thoroughly investigated and considered for action, and while each case is evaluated on its individual merits some general guidelines are emerging.

In cases such as perjury or false reporting that relate directly to the exercise of peace officer authority, the Board has and will continue to take aggressive action. Such lies will result in revocation. Likewise, when an officer lies in reference to a duty-related matter during an official departmental inquiry, especially after the officer has been provided with a "Garrity" warning, the Board believes that revocation is the appropriate action.

In instances where an officer may have been untruthful on relatively minor administrative matters, such as individual time accounting, leave use, off duty employment, or personal relationships not connected to the job, the Board will closely examine and evaluate the facts. Even in these seemingly minor incidents, when lying is shown the Board may seek to suspend or revoke the officer's certification.

In summary, the Board reaffirms its commitment to confront any official untruthfulness on the part of an officer who holds POST certification. While the Board is committed to a fair and reasonable evaluation of each individual case, it will continue to act swiftly and decisively when the evaluation reveals that an Arizona Peace officer has lied.

CASE NO. 1

MISCELLANEOUS MISCONDUCT

The allegations at POST were that Officer A was involved in an on-duty traffic accident for which he received a citation from a fellow officer. He contested the citation. On two occasions, Officer A accessed the e-mail account of the citing officer, looking at messages he thought might be relevant to his case. When he e-mailed thank you messages to several people within the agency, he mistakenly failed to exit the other officer's e-mail account first. He realized that the messages would appear to have come from the other officer and questions would arise. Officer A came forward and made his misconduct known, resigned from the agency and, without admitting any misconduct, voluntarily relinquished his certification to POST. No hearing or fact finding investigation took place to verify the allegations, and POST accepted his relinquishment.

Editor's Note: A relinquishment has the same effect as a revocation except that there is no finding of misconduct.

CASE NO. 2

SEXUAL MISCONDUCT/DISHONESTY

Late one night, Deputy B stopped a female driver for going eastbound in the westbound lanes. The driver was a 33-year-old Japanese student attending the University of Arizona on a student visa. She alleged that the deputy touched her breasts during the contact. The deputy's version of what happened next differed from the student's version in chronology and in whether or not he touched her breasts during a pat-down. The student's statement of facts was consistent throughout the investigation,

including a personnel hearing. The deputy's statement contained crucial inconsistencies, and he was found to be untruthful at hearing and during two polygraph examinations. He maintained that he patted her down for officer safety reasons, but he provided no facts that supported any concern for officer safety. He had also failed, contrary to policy, to notify his communications center of the stop. The Board found that Deputy B conducted an inappropriate pat-down search of a female and was untruthful with investigators. His certification was revoked for malfeasance and committing a crime involving dishonesty.

CASE NO. 3

MISUSE OF PRESCRIPTION DRUGS

Captain C was taking the prescription drug Valium for stressors in his life. The Chief of Police noticed unusual behavior and asked about it. The Chief learned about the Valium and ordered the Captain not to report to work if he had taken Valium. The Chief noticed on two occasions after the order was given that the Captain appeared to be under the influence of something, and he ordered him to submit to a drug test. The test was consistent with Valium use. Less than a month later, Captain C was involved in an off-duty car accident driving a department vehicle. He was at the time dramatically under the influence of Valium. The department terminated him and the Board revoked his peace officer certification.

CASE NO. 4

WILLFUL FALSIFICATION

Applicant D had been arrested in 1989 for carrying a firearm without a permit and for providing false identification to a police officer. He entered into a plea agreement which allowed him to plead guilty to the false information charge and dismissed the weapons charge. That conviction was set aside following the completion of probation. In 1998, Applicant D attended law enforcement training sponsored by FLETC using false identification that represented him as a member of the military police. He was not prosecuted for this offense, but was investigated. When he applied for peace officer certification, Applicant D failed to disclose the arrest, conviction and investigation to background investigators. The Board denied him peace officer certification for willfully providing false information in connection with obtaining certified status.

CASE NO. 5

DISHONESTY

Officer E was driving his father-in-law's car when he struck a barbed wire fence and damaged the fence post. He left the scene of the collision and was followed by the property owner. Officer E's vehicle broke down and the property owner caught up with him and videotaped him exiting the vehicle. Local law enforcement arrived and Officer E told them he was not the driver, but had discovered the vehicle at its current location. He said the vehicle had been stolen from him earlier in the evening and when he found it, it had already been damaged. Officer E lied again in a written memo concerning the events and yet again during an in-person interview. He admitted his lies after being told about the videotape made by the property owner. The Board revoked his certification for committing crimes involving dishonesty.

CASE NO. 6

SEXUAL MISCONDUCT/DISHONEST

Officer F had sex with a citizen observer on two separate occasions while on duty. During the internal investigation, he initially lied to investigators. The investigators had given Officer F ample opportunity to realize that lying would be a much more serious infraction than having sex was. They showed Officer F issues of the POST Integrity Bulletin and specific instances of sex on duty ending in a suspension and lying about sex on duty ending in revocation. He lied by first denying ever having

sex with the woman, then later by admitting sex once off duty, and finally admitting to the two instances as alleged. The matter came to the attention of the POST Board because a concerned county attorney reported it. He was concerned over the necessity to disclose the dishonesty as Brady material in any future criminal cases in which Officer F is a witness or the arresting officer. The Board revoked his certification despite testimony from municipal officials asking for leniency. The Chief of Police testified that the conduct was wrong and required sanction no matter how much he personally cared for the officer involved.

CASE NO. 7

COMMISSION OF A FELONY/DISHONESTY

Chief of Police G, on numerous occasions, gave a private investigator information from NCIC and ACJIS for the investigator's private business use. The U.S. Attorney prosecuted the Chief and obtained a conviction for misdemeanor theft of government property. The Board revoked the Chief's certification for committing felonies and crimes involving dishonesty.

CASE NO. 8

THEFT/FRAUD

Just prior to applying to become a peace officer, Mr. H worked for a state agency in a capacity that has some POST oversight. On several occasions Mr. H claimed, and was paid for, two hours of unearned overtime. He admitted that he had done this about five times in the recent past. He explained the reason he did it was that he needed the money. The Board denied Mr. H peace officer certification for the commission of crimes involving dishonesty.

CASE NO. 9

DRUG USE

Officer I resigned from her agency. About two weeks later, her mother telephoned the agency and asked if her daughter had told them why she resigned. The mother reported, and Officer I later admitted, that she had smoked crack cocaine during the last three months of her tenure as a peace officer. The Board revoked Officer I's peace officer certification for the illegal use of drugs.

CASE NO. 10

DOMESTIC VIOLENCE

Sergeant J was asked to leave his girlfriend's house because he was intoxicated. He refused to leave and a verbal argument ensued and escalated to the point where Sgt. J placed her in a headlock and struck her face with his fist multiple times. The Board revoked his certification for the commission of an offense involving physical violence.

CASE NO. 11

THEFT/FRAUD

Officer K obtained medical insurance for his dependents through his employment with the city. Approximately a year and a half later, his wife divorced him. Documents from the divorce informed the parties that "if you are covered by your spouse's health insurance, and you want to continue coverage after the divorce is final, you must contact the insurance company as soon as possible, and you must start to pay the monthly insurance premium within 31 days of the date the insurance would otherwise stop." The divorce became final. A year later, Officer K married another woman. He did not inform the city of his divorce or of his marriage, but continued to maintain his ex-wife as a dependent on his city insurance. Six months into the new marriage, Officer K attended a child support modification hearing in Superior Court. He testified that he continued to maintain insurance for his ex-wife, pursuant to their dissolution agreement. The Judge warned him that doing so is probably illegal. Officer K later wrote a letter to his ex-wife acknowledging that he was not supposed to have her covered under his policy. He still did not inform the city of his divorce or marriage. Finally,

three months later, he informed the city that he and his ex-wife had divorced, but he did not inform it that his ex-wife had been receiving medical insurance benefits for nearly two years after the divorce. The city had paid out over \$7,700.00 in medical claims to Officer K's ex-wife after the divorce. If Officer K had informed the city of the true status and paid the premiums to continue coverage, the premium costs would have been over \$4,500.00 for the period. A hearing was held by the Office of Administrative Hearings. The Administrative Law Judge found that Officer K engaged in an intentional effort to defraud the city and its insurance carrier, that he committed the offense of fraud and that he was guilty of nonfeasance in office. The Board adopted the judge's findings of fact and revoked Officer K's peace officer certification.

CASE NO. 12

WILLFUL FALSIFICATION

Applicant L was a certified peace officer from 1975 through 1990. In 2001, he obtained an appointment and was proceeding through the waiver test process when information came to light that he had lied on his POST Personal History Form. He stated that he had used marijuana twice, last in 1997, when in truth he had used marijuana 15 to 18 times, with the last use being in November of 2000. This put his use over the presumptive limits and within the three year use-free prohibition. The agency terminated his employment and the Board revoked his certification for falsifying his application and the commission of a felony and crimes involving dishonesty, such as false presentment of an instrument for filing, and marijuana use.

CASE NO. 13

WILLFUL FALSIFICATION

Applicant M lied on POST Personal History forms about the date he last used marijuana. Specifically, he supplied an incorrect date that would have made him eligible under the rule requiring no marijuana use for three years. He stated it was 1996 when in fact it was 1997. He was not hired by any of these agencies. Applicant M told the truth on the Personal History Form that was the basis of his hiring and actual application for certification. The Board entered into a Consent Agreement with Applicant M that he may not apply for certification for an additional two years in order to allow sufficient time to pass to assure the public that his character is suitable for peace officer work.

**Editor's Note: The differences between Applicant L and Applicant M are significant. Applicant M had never been a peace officer. He was not trained in the integrity aspects of police work and his lies were not made on his actual application for certification. Applicant L, on the other hand, was an officer for 15 years. Then he smoked marijuana. Then he lied about it on his actual application for certification. These contrasts do not excuse Applicant M and he received something equivalent to a 2 year suspension, but he did qualify for certification when he applied and he did not lie on that application, so his sanction was not made permanent.*

CASE NO. 14

THEFT/FRAUD

The agency for which Officer N worked gave officers extra pay for performing linguistic translation assistance to other officers. In order to collect the translation pay, officers needed to submit a form through a sergeant to the fiscal management section of the department. Officer N submitted several forms to a sergeant who had overheard the officer saying on the phone that he did not know how or if he was going to make his house payment. The sergeant's suspicions led to an audit of Officer N's payment request forms. Investigation revealed that over a three month period, Officer N submitted over \$850.00 in falsified payment requests. The officer rationalized that many times in the past he had not claimed translations, and during the two months that followed the false claims, he did not put in

for any translations, so it would all add up in the long run. The Board charged him with committing a crime involving dishonesty (theft/ tampering with a public record), misfeasance in office and potentially harming public trust in the law enforcement profession. He did not contest the case or present any mitigating evidence, and the Board revoked his peace officer certification.

CASE NO. 15

SEXUAL MISCONDUCT/DISHONESTY

A woman filed a complaint concerning Officer O. He had stopped her for having a defective rear license plate light. He did not call in the stop as required by department policy. She told him she had a misdemeanor warrant out for her arrest. He searched her three times purportedly for drugs, and in doing so touched her breasts. He kept asking her to give him some reason not to take her to jail. The department investigated. During an IA interview, he denied any improper contact with the woman. However, when asked about an earlier stop he had made for a defective rear license plate, he admitted going to a remote location and having sex with the woman he had stopped. He later admitted to touching the breasts of the original complainant. The Board charged Officer O with committing crimes involving unlawful sexual conduct (sexual abuse), and dishonesty (false reporting), malfeasance in office and conduct that could damage public trust in law enforcement. Officer O did not contest the case and the Board revoked his certification.

CASE NO. 16

MISCELLANEOUS MISCONDUCT

Deputy P enjoyed locating illegal drugs. He sometimes used questionable tactics to obtain consent to search vehicles and homes. He sometimes failed to handle and properly document the evidence after he seized it. His department counseled him and gave him a letter of instruction which directed him to properly log all evidence into the property and evidence room. The month after receiving the letter, Deputy P seized a small amount of cocaine. He arrested the possessor and booked him on possession of cocaine and driving on a suspended license. Deputy P failed to properly document the seizure or to submit the cocaine to the Property and Evidence Unit. About two weeks after the arrest, he took his vehicle to a local tire store to have some work done on it. He was told it would take a couple of hours to complete the work. Deputy P began removing items from the truck for security reasons, when he notices the cocaine in the console. He removed the cocaine and flushed it down the toilet at the tire store. In a previous drug seizure, Deputy P took a package of about 80 grams of methamphetamine home for safekeeping rather than place it in the property room. The Board requested and the deputy took a polygraph examination which verified that he destroyed the cocaine and that he did it for innocent purposes. It also cleared up the deputy's veracity about the circumstances of another drug seizure. The Board took into consideration the lack of FTO program and some earlier problems the department's property unit had when it made the following order. Deputy P's certification was suspended for 16 months from the date he left the employ of the department. It may be reactivated only if the hiring agency communicates clearly its policies on search and seizure and evidence handling, and if he takes classes in search and seizure and evidence handling prior to being appointed.

CASE NO. 17

DISHONESTY

Deputy Q stopped a driver for driving on a suspended license. The vehicle was known to be wanted by a repossession company that offered a \$500.00 fee for location notices. Deputy Q told a fellow deputy that he had called the repossession company and a tow truck showed up to take possession of the vehicle. An internal investigation was begun when the driver complained. Deputy Q denied calling the company during the internal investigation and after being advised of the Garrity warnings.

He also lied about the reason he was at the location in the first place, claiming he had been dispatched to a speeding vehicles call. The Board issued a complaint charging Deputy Q with malfeasance in office and conduct that would diminish public trust in the profession. He did not contest the charges and the Board revoked his certification.

CASE NO. 18

MISCONDUCT WITH A MINOR

Officer R was the subject of rumors that he was involved with a teenage explorer. The department investigated the rumors and substantiated that he had sent several romantic and suggestive e-mails to the 15 year old, and spoken numerous times to the girl on her cell phone. The e-mails were of an intimate tone and were signed, "love always." Officer R at first denied any improper conversations, but eventually admitted to talking to the girl about dating and sexual activities. The girl reported that he said he wished he were not married and that she were 18 so he could date her. In another, unrelated investigation, Officer R was found to have engaged in light petting with a woman while he was working off duty in uniform and in a marked patrol car. The woman had met Officer R while she was working at the police station in a high school program. They became romantically involved when the woman turned 18 years old. The officer requested a hearing to contest the allegations. After hearing, the officer appeared before the Board and offered no information, but made himself available for questions. The state argued that this was "grooming" behavior and quoted the administrative law judge as follows: "It is wrong for a peace officer to use his professional position to initiate personal or intimate relationships with underage girls.... [and it] constituted malfeasance." The Board adopted the Findings of Fact and the Conclusions of Law of the administrative law judge and revoked Officer R's certification.

CASE NO. 19

ALCOHOL ABUSE/DISHONESTY

Officer S was permitted to keep his job despite misconduct stemming from his abuse of alcohol. As a condition of employment, he agreed to attend AA meetings and provide the department with sign-in logs verifying his attendance. Officer S submitted numerous forged sign-in logs and lied to internal affairs about the logs during the first two interviews. During the third interview, he admitted that most of the logs he submitted were forged and he resigned. The Board charged him with committing a crime involving dishonesty, submitting false documents and malfeasance. Officer S did not contest the allegations. The Board revoked his certification.

ADDITIONAL INFORMATION ABOUT POST CASES:

From June through November 2001, the Board considered 70 cases to determine whether or not to initiate disciplinary action against the officers' certification. Of the 70 cases, the Board voted to close 35 without issuing a complaint. The Board did not necessarily determine that POST rule violations were not present in the 35 cases. Rather, those violations were not such that certification action was necessary to protect the public or the public trust in the profession.

Available on the AZ POST web site: www.azpost.state.az.us